IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC(I) 06

Suit No 7 of 2017

Between

B2C2 Ltd

… *Plaintiff*

And

Quoine Pte Ltd

… *Defendant*

JUDGMENT

[Civil Procedure] — [Stay of proceedings]

[Contract] — [Remedies] — [Damages]

[Equity] — [Remedies] — [Equitable compensation]

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B2C2 Ltd
v
Quoine Pte Ltd

[2019] SGHC(I) 06

Singapore International Commercial Court — Suit No 7 of 2017
Simon Thorley IJ
18 April; 14 May 2019

14 May 2019 Judgment reserved.

Simon Thorley IJ:

Introduction

1 Judgment was given on 14 March 2019 in *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 03 ("the Judgment") following the trial of this action. The action succeeded both in breach of contract and breach of trust but, for the reasons given in [254]–[257] of the Judgment, I held that the plaintiff ("B2C2") was not entitled to an order for specific performance. Its remedy lay only in damages.

2 I invited the parties to liaise to seek to agree on an Order giving effect to the Judgment. This they were unable to do and travelling drafts were prepared indicating the areas of dispute.[1] Having reviewed these drafts, I directed the Registry to issue a letter on 8 April 2019 which stated:

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[1] See Annex A (Plaintiff's proposed draft judgment), and Annex B (Defendant's proposed draft judgment). The Plaintiff also prepared a draft Order, excerpted at Annex

> Subject to anything the parties wish to submit to the contrary, the Court proposes first to deal with the following issues:
>
> > 1. The Plaintiff's entitlement to the order sought in paragraph 2 of its draft.
> >
> > > (a) Is the Plaintiff entitled to any financial compensation by way of equitable relief in the form of an account in addition to damages at common law?
> > >
> > > (b) What would be the nature of that account?
> > >
> > > (c) If not, is the Plaintiff entitled to elect to receive any such equitable relief in lieu of damages at common law?
> > >
> > > (d) If so, what election would the Plaintiff make?
> >
> > 2. The grounds on which the order sought in paragraph 3 of its draft is justified.
> >
> > 3. Whether the order as to financial compensation should be in the form sought by the Plaintiff at paragraph 4 of its draft or by the Defendant in paragraph 2 of its draft?
> >
> > 4. Whether any assessment of costs should await the outcome of any appeal?
> >
> > 5. Whether any assessment of financial compensation should proceed or whether it should be stayed pending any appeal?
>
> The Court considers that these matters are capable of being resolved on the basis of written submissions without the need for an oral hearing but will appoint an oral hearing if either party requests it.

3 Thereafter the parties provided written submissions and did not seek an oral hearing. This is therefore my decision on the Order.

C.

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Financial Compensation by way of Equitable Relief (Paragraph 2 of the Plaintiff's draft)

4 The Plaintiff seeks, in addition to damages at common law for breach of contract, an account of the trust assets held on trust by the Defendant together with equitable compensation for loss suffered as a result of the breach of trust.

5 The first question is whether the Plaintiff is entitled to an account of the trust assets. This depends upon whether this is necessary in order to identify specific assets in respect of which there may be an entitlement to relief: see *Libertarian Investments Ltd v Hall* (2013) 16 HKCFAR 681 at [98]–[99]. In the present case there is no dispute as to what constituted the assets that were held on trust by the Defendant. They were the Bitcoin ("BTC") which were wrongly the subject of the reversal of the Trades and which were re-credited to the Counterparties' accounts on the Defendant's instructions. There is thus no need for an account of the assets.

6 The second question is whether the Plaintiff is entitled to equitable loss-based financial compensation in addition to damages for breach of contract. The equitable financial relief that is usually sought is an account of the profits made by the Defendant as a result of its breach of trust. Damages at common law compensate the wronged party for the loss it has suffered whereas an account of profits serves to deprive the party in breach of the profits it has made as a result of the wrongful acts. One compensates for loss and the other ensures that the wrongdoer does not profit from its wrongdoing. The English Court of Appeal decision in *Ausman Ramzan v Brookwide Ltd* [2011] EWCA Civ 985 is illustrative of the point. In that case, there were two causes of action arising out of the same incident, one for trespass and the other for breach of trust. The Court held that the two did not provide cumulative remedies. They were alternative remedies, one of which measured the wrongdoer's gain and the other, the

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wronged party's loss: see also *Quality Assurance Management Asia Pte Ltd v Zhang Qing and others* [2013] 3 SLR 631.

7 The Plaintiff contends that the same does not apply where the equitable relief sought is compensation for its loss rather than being awarded the Defendant's profits. I do not agree. As was made clear in the Judgment, the two causes of action were alternative routes to the same conclusion: that the defendant had acted wrongly in reversing the Trades. There was only one incident which gave rise to the two causes of action. In these circumstances it would be wrong to grant the wronged party two aspects of compensation.

8 The third question is whether the Plaintiff is entitled to elect for equitable rather than common law compensation for loss where the loss arises in circumstances where the equitable relief of specific performance has been refused. This is not a matter which has been fully addressed and should be the subject of pleadings and a further hearing in due course.

9 The fourth question is when the Plaintiff should make its election if it is permitted to do so. The Plaintiff has suggested that it should not be forced to make an election before judgment in the Court of Appeal in case one part of the Judgment is overturned. Given my determination at [8] above, the question when the Plaintiff must make its election should also be the subject of pleadings and addressed at a further hearing when the question of whether it has the right to elect has been decided. If the Plaintiff is entitled to make an election, but is required to do so in advance of the appeal, it will be given the option to seek a stay of the election and hence any assessment pending the outcome of the appeal.

10 Paragraph 2 of the Plaintiff's draft shall therefore be deleted.

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The Indemnity (Paragraph 3 of the Plaintiff's draft)

11 This was originally asserted to be an indemnity for loss suffered by the Plaintiff by reason of the Defendant's breach of contract. In its written submissions the Plaintiff contended that this was an inadvertent error and should instead have referred to the breach of trust. Regrettably the Plaintiff did not give advance notice to the Defendant of that error such that the Defendant was constrained to put in further written submissions. In these the Defendant objected to the late change of position and sought permission to file yet further submissions if these were required.

12 However, I do not consider that they are. Regardless of whether the indemnity is sought on the basis of breach of contract or breach of trust I do not consider that such a term is appropriate in this case. The Plaintiff has succeeded in the action but the only relief it is entitled to is financial relief in one form or another. It is not entitled to specific performance. It is not entitled to any other substantive relief over and above this. If the proposed indemnity goes beyond this, it is not entitled to it, and if it does not go beyond, it adds nothing.

13 Paragraph 3 of the Plaintiff's draft shall therefore be deleted.

The Order for an Assessment (Paragraph 4 of the Plaintiff's draft)

14 In the light of [4]–[9] above, paragraph 4 of that draft, now paragraph 2 of the draft Judgment, should be rewritten as follows:

> 2. The Defendant is liable to pay the Plaintiff damages in respect of the breach of contract referred to at [1] above or equitable compensation in respect of the breach of trust referred to at [1] above. The Plaintiff's right to elect between the two shall be the subject of a further hearing and thereafter such damages or compensation shall be assessed if not agreed. The costs of the assessment are reserved.

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Interest and Costs (Paragraphs 5 and 6 of the Plaintiff's draft)

15 These paragraphs, which are not in dispute, will be renumbered 3 and 4 and shall be in the form indicated in the Defendant's draft, with the addition indicated in [19] below.

Stay of the order for costs

16 The normal rule is that there will be no stay of the assessment of costs or of the order for payment of costs pending an appeal since an appeal does not operate as a stay of execution: see O 57 r 15 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). It is common ground that the Court has a discretion to order a stay but there must be special grounds in any given case for the discretion to be exercised against the successful party. The primary ground put forward here is that there is a real risk that if the sums awarded by way of costs were paid over, the Plaintiff might be unwilling or unable to repay them in the event of a successful appeal.

17 This, to my mind, does not warrant the stay of the assessment of costs but it may, depending on the evidence, warrant the imposition of terms into the order for payment of those costs, once assessed, if the Court is satisfied that the Defendant is entitled to a measure of protection to ensure that the fruits of any successful appeal are not lost.

18 There will therefore be no stay of the assessment of costs but the Defendant will be at liberty, once the costs are assessed (or agreed), to apply to the Court either for a stay of payment pending the outcome of the appeal or for terms to be imposed on such payment pending that outcome.

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19 The following sentence shall thus be added to the (new) paragraph 4 of the draft:

> The Defendant shall be at liberty following assessment or agreement to apply to the Court either for a stay of payment pending judgment on the appeal or for terms to be imposed on such payment pending judgment thereon or further order in the meantime.

Stay of the Assessment

20 The Court may exercise the same discretion to stay any inquiry as to damages or the assessment of equitable financial compensation pending the outcome of the appeal. Here the Defendant points not only to the possibility that any sums paid over might not be recoverable but also to the potential complexity and cost of carrying out the financial investigation. I consider that the first point can be dealt with in the same manner as for costs. Before any sums are ordered to be paid over, the Defendant will be at liberty to apply for a stay of payment or for terms to be imposed.

21 The second point is of greater substance since an assessment may well involve input from accountants and/or expert witnesses. I would be reluctant to put the parties to this expense if an appeal were to be imminent. The Plaintiff has however indicated that it wishes to seek an interim payment and this is something that it should be possible to assess without undue delay or expense. The objective will be to assess the minimum sum which the Plaintiff would expect to be awarded on the assessment. Any sum which is the subject of reasonable dispute will not be awarded as part of any interim award. Once this is done, the question of a stay of the remainder of the assessment can be considered.

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Further Directions

22 Accordingly, the correct way forward is as follows:

(a) The Plaintiff will within 28 days of the date of this Order serve a pleading in the form of Points of Claim in support of its claim to financial compensation.

(b) It will within the same period plead its case on its right to elect in the circumstances of this case for equitable financial relief in the alternative to common law damages, on the time at which any such right must be exercised and on the alleged limitation of liability issue referred to in [135] of the Judgment.

(c) If the Plaintiff wishes to make an application for interim payment, it will, within the same period, make such an application.

(d) Within 28 days of service of the Points of Claim referred to in (b) above the Defendant will serve Points of Defence together with its pleading in response to the matters set out in (b) above.

(e) The parties will within 28 days confer on the quantum of costs and disbursements up to and including disposal of this action on liability to be paid by the Defendant to the Plaintiff, and shall notify the Court of the extent of the parties' agreement or disagreement, and, if not agreed, the Court shall fix the said quantum of costs and disbursements.

(f) Thereafter a Case Management Conference will be appointed for further directions.

(g) The Parties have liberty to apply.

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23 The Plaintiff's draft Order contains a provision for the discharge of the Security given by the Plaintiff for the Defendant's costs up to the trial of the action. I have received no submissions on this matter. If the Defendant does not consent to the discharge, reasons should be given in writing prior to the next Case Management Conference.

24 The Parties should draw up the necessary draft Judgment and draft Order giving effect to the above for approval by the Court.

Simon Thorley
International Judge

Danny Ong, Sheila Ng and Jason Teo (Rajah & Tann Singapore LLP) for the plaintiff;
Paul Ong, Ivan Lim and Marrissa Karuna (Allen & Gledhill LLP) for the defendant.

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Annex A: the Plaintiff's proposed draft judgment

This action having been tried before the Honourable Justice Simon Thorley on 21, 22, 23, 26 and 29 November 2018, **IT IS THIS DAY ADJUDGED THAT:**

1. The Defendant has acted in breach of contract and in breach of trust, in respect of its reversal of the Trades (as defined at [6] of the Statement of Claim filed herein) and the deduction of 3084.78582325 BTC from the Plaintiff's account maintained with the Defendant, and refusing to pay and/or withholding the same from the Plaintiff;

2. The Defendant held and continues to hold on trust and is liable to account to the Plaintiff for 3084.78582325 BTC, and/or any and all assets, properties and/or benefits representing all or part of the same, and there be an account and inquiry of the same;

3. The Defendant is liable to indemnify the Plaintiff and keep the Plaintiff indemnified in respect of any loss, damage, cost and/or expense which has been or may be suffered by the Plaintiff by reason of the breach referred to at [1] above, and to pay the Plaintiff any and all such loss, damage, cost and/or expense, as assessed if not agreed;

4. The Defendant is liable to pay the Plaintiff damages in respect of the breach of contract referred to at [1] above, and/or equitable compensation in respect of the breach of trust referred to at [1] above, as assessed if not agreed;

5. The Defendant shall pay to the Plaintiff interest pursuant to the Civil Law Act on all sums due and/or found to be due under [3] to [4] above, at the rate of 5.33% per annum, for the period of 20 April 2017 to the date of this judgment;

6. The Defendant shall pay the Plaintiff costs and disbursements up to and including the disposal of this action on liability, such costs and disbursements to be fixed if not agreed.

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Annex B: the Defendant's proposed draft judgment

This action having been tried before the Honourable Justice Simon Thorley on 21, 22, 23, 26 and 29 November 2018, **IT IS THIS DAY ADJUDGED THAT:**

1. The Defendant has acted in breach of contract and in breach of trust, in respect of its reversal of the Trades (as defined at [6] of the Statement of Claim filed herein) and the deduction of 3084.78582325 BTC from the Plaintiff's account maintained with the Defendant, and refusing to pay and/or withholding the same from the Plaintiff;

2. The Defendant is liable to pay the Plaintiff damages in respect of the breach of contract and/or breach of trust referred to at [1] above, as assessed if not agreed;

3. The Defendant shall pay to the Plaintiff interest pursuant to the Civil Law Act on all sums due and/or found to be due under [2] above, at the rate of 5.33% per annum, for the period of 20 April 2017 to the date of this judgment;

4. The Defendant shall pay the Plaintiff costs and disbursements up to and including the disposal of this action on liability, such costs and disbursements to be fixed if not agreed.

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Annex C: the Plaintiff's proposed draft Order

AT THE CASE MANAGEMENT CONFERENCE on [●], UPON READING [●], AND UPON HEARING Counsel for the Plaintiff and Counsel for the Defendant, IT IS ORDERED THAT:

1. Parties shall, within 1 month of the date of this order, confer on the quantum of the costs and disbursements up to and including the disposal of this action on liability to be paid by the Defendant to the Plaintiff, and shall notify the Court of the extent of the parties' agreement or disagreement, and if disagreed, the Court shall thereafter fix the said quantum of costs and disbursements;

2. In respect of the trial on assessment of damages and/or equitable compensation and an account and inquiry (the "**Assessment and Inquiry**"):

> (a) parties shall, by 30 April 2019, disclose the identity of their respective quantum expert, and confer as to the issues on which the experts are to. The parties shall, by 15 May 2019, notify the Court of the extent of the parties' agreement or disagreement on the above matters, and the Court shall thereafter issue directions on the same;
>
> (b) parties shall, by 31 May 2019, file and serve a Supplementary List of Documents ("**SLOD**") enumerating the documents on which they rely, in respect of the Assessment and Inquiry, and parties shall within 7 days of such filing and service, produce to the other copies of all documents enumerated in their respective SLOD;
>
> (c) if necessary, parties shall, by 14 June 2019, serve on the other their respective requests to produce documents; and
>
> (d) parties shall, by 31 August 2019, file and serve the affidavits of evidence-in-chief of their respective factual and/or expert witnesses in respect of the Assessment and Inquiry;

3. The alleged limitation of liability point referred to at [135] of the Judgment in *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 03 shall be disposed together with the issues in respect of the Assessment and Inquiry;

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4. The Plaintiff shall, within 1 month of the date of this order, make its application for interim payment of damages and/or equitable compensation; and

5. The security for the Defendant's costs up to the trial of the action in the sum of S$80,000, given by the Plaintiff by way of solicitor's undertaking on 27 July 2017, is discharged.

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